



BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

HD:hd

Docket No: 01969-99 23 November 1999

From:

Chairman, Board for Correction of Naval Records

To:

Secretary of the Navy

Subj:

REVIEW OF NAVAL RECORD

Ref:

(a) Title 10 U.S.C. 1552

Encl:

- (1) DD Form 149 dtd 1 Mar 99 w/attachments
- (2) PERS-311 memo dtd 19 Jul 99
- (3) PERS-61 memo dtd 13 Aug 99
- (4) PERS-85 memo dtd 13 Oct 99
- (5) Memo for the Record dtd 16 Nov 99
- (6) Subject's naval record
- 1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 1 February to 12 October 1998, a copy of which is at Tab A. Petitioner further impliedly requested removal of his failure of selection for promotion before the Fiscal Year 00 Lieutenant Commander Staff Selection Board, so as to be considered by the selection board next convened to consider officers of his category for promotion to lieutenant commander as an officer who has not failed of selection for promotion to that grade.
- 2. The Board, consisting of Mses. Hardbower and Moidel and Mr. Flood, reviewed Petitioner's allegations of error and injustice on 18 November 1999, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
- 3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:
- a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
- b. Petitioner contends that the contested fitness report reflects obvious inconsistencies between the marks in "performance traits" and his actual reported performance during the

period concerned; that the negative comments and low promotion recommendation suggest that the report could be interpreted as adverse or, more likely, punitive rather than evaluative in nature; and that the report is not an accurate representation of his efforts or effectiveness during the period in question and, as such, is both unfair and unjust. He alleges that the reporting senior used the fitness report as punishment and retaliation for a "situation" that occurred when he was deployed to Thailand. He maintains it was out of concern for his mentally handicapped daughter that he protested the field commander's decision, the night before he was to return to Okinawa, for him to stay an additional three weeks. He says the reporting senior, who had been advised of the matter by the field commander, later counseled him about being "very negative." To support his application, Petitioner provided a letter of appreciation and two letters on his behalf.

- c. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, has commented that the supporting documentation raises "considerable doubt" as to the fairness of the contested fitness report, however, they recommended retaining it. They further commented that the petition should be forwarded to the Director, Equal Opportunity Division (PERS-61) for comments on Petitioner's allegation that the report was issued as a form of punishment and retaliation. They stated that should this allegation be found to have merit, they would have no objection to removal of the report as requested.
- d. In correspondence attached as enclosure (3), PERS-61, the NPC office having cognizance over equal opportunity matters, has recommended that the contested fitness report be removed. They concurred with PERS-311 that the correspondence Petitioner provided cast "considerable doubt" on the fairness of the report. They noted he admits to a "situation" which caused the commanding officer some concern. Although they did not think Petitioner "proves" the report was punitive, they stated "there is enough doubt" to believe "it was intended to be punitive in response to the 'situation.'"
- e. In correspondence attached as enclosure (4), PERS-85, the NPC office having cognizance over active duty promotions, has commented to the effect that should it be decided to remove the fitness report at issue, they do not recommend removing Petitioner's failure of selection for promotion. They stated that removing the report "will positively impact the quality of his record," but they cited other matters in his record to support a conclusion that removing the report at issue "does not improve substantially the overall competitiveness of his record."
- f. All three NPC advisory opinions were sent to Petitioner to give him a chance to comment. Enclosure (5) is a memorandum for the record documenting a phone message from him indicating he did not desire to submit any additional information in response, and that the case could go before the Board as soon as possible.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting partial relief, specifically, removal of the contested fitness report. They agree with enclosure (4) in finding that Petitioner's failure of selection for promotion should stand. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing therefrom the following fitness report and related material:

Date of Report	Reporting Senior	Period From	of	Report To	
98Nov03	PISMC	98Feb01		98Oct12	

- b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the report.
- c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.
- d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.
 - e. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN Recorder

JONATHAN S. RUSKIN

Irrethan S, Robin

Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

W. DEAN PFEIL Executive Director



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

1610 PERS-311 19 July 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LT

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

- 1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 February 1998 to 12 October 1998.
- 2. Based on our review of the material provided, we find the following:
- a. A review of the member's headquarters record revealed the report in question to be on file. It is signed by the member acknowledging the contents of the report and his right to submit a statement. The member did not desire to submit a statement. In accordance with reference (a), Annex S, Paragraph S-8, the member has two years from the ending date of the report to submit a statement.

to 12 October 1998 because it was not an accurate representation of his efforts or effectiveness. The member also claims the marks on the front of the report are not substantiated by the comments, and also claims the reporting senior used the grades on the fitness report as punishment and retaliation. The fitness report is a detachment of individual/regular report submitted upon the member's transfer to another unit.

provided a letter of appreciation and two letters of support in his petition from officers who observed his performance during the reporting period. The letter of appreciation from Brigadies Commander 18th Wing commented specifically one Line and teamwork with the chaplains in the joint religious ministry. The letters of support was from the letter

- d. Each fitness report represents the judgment of the reporting senior during a particular reporting period. They do not have to be consistent with previous or subsequent reports. The reporting senior has made it clear why he issued the report as he did.
 - e. Enhancement of chances for promotion is not sufficient reason to remove a fitness report.
 - f. The member does not prove the report to be unjust or in error.
- 3. We recommend the member's petition be forwarded to the Director, Equal Opportunity Division (PERS-61) for comments on the member allegation the fitness report was issued as a form of punishment and retaliation.
- 4. We recommend retention of the report. However, should the member's allegation that the fitness report was used as a form of punishment and retaliation be found to have merit, we have no objection to removal of the report as requested.

Head, Performance Evaluation Branch



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

PERS-61/087 13 Aug 99

1610

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Via: Assistant for BCNR Matters, Pers-00ZCB

SUBJ: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF LIEUTE. USN

Ref: (a) BCNR PERS-00ZCB memo of 3 AUG 99

(b) OPNAVINST 5354.1D

Encl: (1) BCNR File 01969-99

- 1. Reference (a) requested an advisory opinion in response to request to remove his fitness report for the period 1 February 1998 to 12 October 1998 from his record. Enclosure (1) is returned.
- 2. alleges this particular fitness report does not reflect his true performance. He feels the low marks, adverse comments and low promotion recommendation are punitive in nature as a result from an incident revolving around a deployment to Thailand for Cobra Gold.

General USAF, Commander, 18th Wing; a letter of support from k, CHC, Wing Chaplain, 1st Marine Aircraft Wing; and a letter of support from USMC, Commanding Officer, PSD-17. These three letters lend credible doubt to the fairness in this particular fitness report.

- 4. Fitness reports are supposed to be an assessment tool, which reflects the opinion of the Commanding Officer. What bothers me in this case is that a Marine Corps Colonel signed this report and a board looking at this report will not have the opportunity for comparison against this reporting senior.
- 5. admits there was a "situation" which caused some concern for the commanding officer. Although I don't think that proves that the report was punitive in nature, there is enough doubt for me to believe it was intended to be punitive in response to the "situation".

SUBJ: REQUEST FOR COMMENTS AND RECOMMENDATIONS IN CASE OF LIEUTENANT

I recommend the fitness report be removed in accordance to reference (b).

Director, Professional Relationships Division (Pers-61)



DEPARTMENT OF THE NAVY NAVY PERSONNEL COMMAND 5720 INTEGRITY DRIVE MILLINGTON TN 38055-0000

5420 Ser 85/218 13 Oct 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: USNR,

Ref: (a) PERS-311 memo 1610 of 19 Jul 99

(b) PERS-61 memo 1610 Ser 087 of 13 Aug 99

Encl: (1) BCNR File

- 1. Enclosure (1) is returned. equests the removal of his fitness report for the period 1 February 1998 to 12 October 1998 based on his allegation that the report did not accurately display his performance during the reporting period. His record was reviewed before the FY-00 Active Lieutenant Commander Staff Promotion Selection Board and he was not selected.
- 2. Modification to see some second has been addressed in references (a) and (b). While removal of the fitness report in question will positively impact the quality of his record, it does not improve substantially the overall competitiveness of his record, thus, does not warrant failure of selection removal.
- 3. July 1996 displayed a negative trend in performance and severely impacted the competitiveness of his record. Subsequent fitness reports displayed his performance as a 1 of 1 Must Promote with a trait average either equal to or below the Reporting Senior's cumulative average. It is understood that his fitness report for the period 1 October 1997 to 31 January 1998 displayed his performance for 4 months, and cannot be looked upon negatively. Nevertheless, the reports stated above do not positively impact the competitiveness of his record amongst his peers.
- 4. Should it be determined that the fitness report be removed, we do not recommend removal of his failure of selection, rather, recommend that his record go before the next regularly scheduled promotion selection board as an above zone eligible officer.

BCNR Viaison, Officer Promotions and Enlisted Advancements Division

HD:hd Docket No. 01969-99 16 November 1999

MEMORANDUM FOR THE RECORD

Subj: LT USNR, CHC,

1. This memorandum for the record is to document a phone message left by the Petitioner to this staff member indicating that he did not desire to submit any additional information pertaining to his case and specifically to the advisory opinion which he received.

2. He indicated that the case could go before the Board as is as soon as possible.

Examiner